IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 180 of 2003
in
SPECIAL CIVIL APPLICATIONNo 2891 of 2002
With
CIVIL APPLICATION No. 2891 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PB PATEL

Versus

GUJARAT SAHITYA ACADEMY

Appearance:

1. LETTERS PATENT APPEAL No. 180 of 2003
MR PARESH UPADHYAY for Appellant No.
NOTICE SERVED BY DS for Respondent No. 1
Ms. Manisha Lavkumar, AGP for Respondents 2 to 4.

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE K.A.PUJ

Date of decision: 22/04/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

Rule. Learned Assistant Government Pleader, Ms. Manisha Lavkumar, waives the service of Rule. In view of the peculiar facts and special circumstances and upon consensus, this Letters Patent Appeal is taken up for Final Hearing, today itself.

2. The challenge is against the order, of learned Single Judge, dated 4-2-2003 in Special Civil Application No. 2891 of 2002 whereby the petition of the appellants for restraining the respondent No.1 from recovering the arrears of overpayment made to the original-petitioners on account of revision of pay-scales, came to be rejected mainly on the ground that the original-petitioners belong to and are the employees of Gujarat Sahitya Academy, which is not a department of the Government but, a Registered Society and therefore was not competent to fix the pay-scales pursuant to "The Gujarat Civil Services (Revision of Pay) Rules, 1998, ["ROP Rules 1998"] and therefore the revised salary paid to the employees of the respondent No.1 Gujarat Sahitya Academy is not as per the Rules and should be recovered and also on the ground that there was an undertaking.

3. The only question, which comes to the focus, in this Letters Patent Appeal, is circumscribed to recovery of arrears paid to the original-petitioners, appellants before us, on account of revision of pay-scales. The order of the Government, directing the Academy for recovery, and resultant order of recovery, from the employees-petitioners were sought to be challenged, but unsuccessfully, before the learned Single Judge. It is in this context, it has been submitted by learned advocate, Mr. Upadhyay for the appellants, original-petitioners, that the payment of arrears has already been made, and in view of the provisions of Rule 57A of BCS Rules, recovery cannot be effected. It is also submitted that otherwise also after such a long time the payment made to the appellants cannot be recovered as there is no allegation of any overt act attributable to the appellants. Both these reasons, for restraining the recovery, are again questioned and challenged by the learned Assistant Government Pleader.

4. Our attention has been drawn to the Division Bench decision of this Court in Letters Patent Appeal No.

578 of 2000 in Special Civil Application No. 2196 of 1999 on 4-4-2001 [Coram: Chief Justice Mr. D.M. Dharmadhikari, as he then was, and P.B. Majmudar, J.] by learned advocate Mr. Upadhyay in support of his aforesaid submissions. He has also relied on a Single Bench decision of this Court [Coram: Jayant Patel, J.] in Special Civil Applications No. 6006 to 6008 of 2002, on the same point. We have dispassionately examined both the decisions. The proposition, which is expounded and which has been accepted, is that a decision or order of the higher authority, to recover the arrears and that too after a long period of more than 4 years without any overt act attributable to the employees or in absence of any fault or any mistake on their part, cannot be held to be justified. The learned Single Judge, in the latter case, has also placed reliance on the proposition of law laid down by the Division Bench in the former case.

5. In the case on hand, it is also an admitted fact that there is no, even remote, suggestion that the recovery to be effected, or sought to be effected of the arrears of amount, is in any way relatable or referable to the conduct or mistake or any overt-act on the part of the employees, and that too after a long time. On the contrary, the record manifestly discloses that the appellants, original-petitioners, who are the employees of the respondent No.1 Academy, started getting interim relief right from 1993 and thereafter the Academy authority, relying on ROP Rules 1998 and considering the revision of pay-scales granted revised pay-scales and employees started getting the benefits of such revised pay-scales. Not only that, the authority also obtained from each employee an undertaking. Obviously, it could not have been done without the Academy authority asking for additional funds for payment from the Government. More over, the proposition, laid down in the aforesaid two decisions, is also attracted to the facts of the present case. Again, it may be noted that the contemplation of recovery of amount, as sought to be done from the employees by the respondent No.1 Academy on account of the order passed by the respondent No.2 State of Gujarat, is made without even any notice to the appellants after a long time. It may be clarified, that this does not mean the payment made to the employees was justified. This is highlighted with a view to consider the plea against the recovery. It is one of the circumstances to which we cannot be oblivious. The Division Bench, in the former case (Supra), has observed that in such a situational reality the recovery of amount, which has already been paid and when it is sought to be recovered after a long time, would tantamount to a

punishment or penalty and which cannot be done without show cause notice being issued. In this case also, the undertaking, which is given prominence while refusing the plea against the recovery, be it noted that it is a consensus, and it is a fact that upon implementation of the ROP Rules 1998 for the revision of pay-scales all the employees of the State of Gujarat were required to submit undertaking in terms of prescribed format in Form-II pursuant to Note 1 and Note 2 of Clause 6 of Rule 3 of ROP Rules, 1998. It is, therefore, evident that the execution of such an undertaking is not only as a special case or only with special reference the revised pay-scale was given to the original-petitioners, appellants before us. Had it been a case, the position would have assumed a different complexion. Here, the undertaking is to be considered and treated in the light of a first condition or requirement for availing the revision of pay-scales as per ROP Rules 1998. If it is pursued and considered in that context, the undertaking's weightage and the significance, which is attached by the learned Single Judge, would pale into insignificance.

6. On both these counts, we find that the appellants are entitled to succeed in their plea raised against the recovery, and, in our opinion, the learned Single Judge has not been able to appreciate this aspect and issue in this context and in aforesaid background. We, therefore, find that the view and the ultimate decision, directing the refund in respect of the arrears of pay pursuant to the revised pay-scales granted under ROP Rules 1998, requires to be quashed and set aside. This Appeal, obviously, therefore, is required to be partly allowed.

7. There is one interesting aspect, which we should place it on record before parting with this Judgment. The respondent No.2, State of Gujarat, has sought recovery of the total amount which came to be paid ultimately to the employees of the respondent No.1 Academy. Since we have found that the respondent No.1 Academy should be directed and restrained from recovering the arrears on the aforesaid ground, the question would arise as to whether the recovery from the separate corpus, other than the Government grant, could be made by the respondent No.2 from the respondent No.1 or not. In the facts of the present case, the equity weighs in favour of the employees, but in so far as the respondent No.1 is concerned, which is the creator of the entire issue, it cannot be left out and therefore it will be open for respondent No.2 to appropriately, if so desired, recover the excess amount paid to the Academy by the State of Gujarat, respondent No.2. Therefore, this

direction to respondent No.1, in so far as the appellants are concerned, would not operate as a ban or bar for the respondent No.2 State of Gujarat to recover the amount of arrears paid to the employees who are appellants before us by the respondent No.1 Academy without the prior approval of the respondent No.2.

8. In the end result, the impugned order of recovery of respondent No.1 Academy at Annexure "A" against the appellants, original-petitioners, shall not be implemented.

9. With these observations, this Letters Patent Appeal, in exercise of powers under Clause 15 of the Letters Patent shall stand partly allowed to the aforesaid extent, without any order as to costs.

10. The Civil Application No. 1226 of 2003 shall stand disposed of in consequence of the above order passed in this main appeal.

rmr. [J.N. Bhatt, Actg. C.J.]

[K.A. Puj, J.]